STATE OF MINNESOTA CITY OF SAINT PAUL

COUNTY OF RAMSEY HUMAN RIGHTS COMMISSION

W. H. Tyrone Terrill, Director
St. Paul Department of Human Rights
Ex rel. Willie White,

Complainants,

OAH No. 8-2111-12468-3

vs.

RECOMMENDATION ON PENDING MOTIONS

The Court Apartments, owned
By James Marty,

Respondent.

The Director of the Department of Human Rights (the Department) of the City of St. Paul (the City) began this civil enforcement proceeding by issuing a Notice of Hearing and Complaint on July 27, 1999. The Complaint alleged that the Court Apartments had violated Chapter 183 of the Saint Paul Legislative Code (the City Code) by committing housing discrimination against the Complainant Willie White based on his familial status.

A Resolution of the City assigned the undersigned Administrative Law Judge to serve as Law Officer for and to preside over the hearing. That hearing occurred on August 25 and September 28, 1999. Subsequently, on November 4, 1999, the Law Officer held a telephone conference with counsel for the parties to establish a schedule for their post-hearing submissions. Court Apartments was to file its brief and any proposed findings of fact on or before November 29, 1999. The City was to file its brief and any proposed findings of fact on or before December 8, 1999, and Court Apartments was allowed until December 15, 1999, to file a reply to the City's brief. The record in this matter closed on December 15, 1999, when any reply brief from Court Apartments was to have been received.

After the hearing ended, Court Apartments raised three legal issues that are more appropriately addressed as motions, namely (1) a motion to allow it to introduce the Affidavit of Colleen Wald as evidence in the record of this proceeding; (2) a motion to dismiss this matter on the ground that Willie White lacked standing to bring his Complaint; and (3) a motion to dismiss this matter because the Complainants failed to establish a *prima facie* case at the hearing.

After considering the briefs of counsel and everything else in the record of this proceeding and for the reasons explained in the accompanying Memorandum, the Law Officer respectfully RECOMMENDS that the Panel of Commissioners (the Panel):

(1) DENY Court Apartments' motion to introduce the Affidavit of Colleen Wald as evidence in the record of this proceeding;

(2) DENY Court Apartments' motion to dispose of this proceeding summarily on the ground that Willie White lacked standing to maintain it; and

(3) DENY Court Apartments' motion to dismiss this proceeding on the ground that the Complainants failed to establish a *prima facie* case.

Dated this _____ day of January 2000.

JON L. LUNDE
Law Officer

MEMORANDUM

I. Court Apartments' Request to Introduce the Affidavit of Colleen Wald into the Record.

During the hearing counsel for the Court Apartments tendered as evidence Exhibit 12, which consisted of notes that he had taken of statements made by Colleen Wald, a witness whom he had interviewed. The City objected to the introduction of Exhibit 12 on the ground that it represented testimony of a party's counsel of record and was therefore incompetent, since counsel are precluded from serving in the dual role of attorney and witness in a proceeding.[1] The Law Officer first took the matter under advisement,[2] and at the close of the hearing, after considering the arguments of the parties, the Law Officer sustained the City's objection to the introduction of Exhibit 12 and excluded it.[3] After the hearing ended and by letter dated November 29, 1999, counsel for Court Apartments tendered as evidence an affidavit by Colleen Wald as a substitute for Exhibit 12. He indicated a belief that the Law Officer had directed the record to be kept open for the purpose of further addressing the issue of statements that Ms. Wald may have made.

Ordinarily a hearing record closes when the hearing ends unless the presiding officer gives an express directive that the record remain open. Here, the hearing record reveals no request by Court Apartments to keep the hearing record open for any purpose,[4] and the Law Officer has no recollection of directing the hearing record to be kept open for any period of time. Neither the hearing transcript nor the Law Officer's letter reports of discussions concerning post-hearing briefing issues reveal any directive to keep the record of this proceeding open. Finally, it is most unlikely that the Law Officer would have directed the record to be kept open without specifying a date on which it would be closed. In view of all of this, Court Apartments' request to introduce the Affidavit of Colleen Wald as evidence in the record of this proceeding should be denied as being untimely.

II. Willie White Has Standing to Maintain His Complaint.

The Department initiated this proceeding on behalf of Willie White, alleging that Court Apartments committed housing discrimination against him and his family by evicting them from their apartment in violation of Section 183.06 of the City Code. During the hearing Court Apartments raised the issue of whether Willie White ever had standing to file a complaint with the Department, since he was not specifically named as a lessee on the lease. In Minnesota state practice, "standing" refers to a party's capacity to maintain an action.[5] So the Law Officer will treat the standing issue as a motion by Court Apartments for summary disposition on the ground that, as a matter of law, Willie White lacks the capacity to bring this action.[6]

Summary disposition is the administrative equivalent of summary judgment in district court practice. It is appropriate in cases where there is no genuine dispute about the material facts, and one party must necessarily prevail when the law is applied to

those undisputed facts.[7] When considering motions for summary disposition in administrative proceedings, presiding officers generally follow the standards and criteria that have emerged in practice under the Minnesota Rules of Civil Procedure.[8] There, a genuine issue is considered to be one that is not a sham or frivolous, and a material fact is one whose resolution will affect the result or outcome of the case.[9]

The underlying facts that are involved in this motion are not in dispute. On December 1, 1996, Sophia White leased the apartment in question by signing a month-to-month lease with Court Apartments. No signature of Willie White appeared on the lease.[10] On the other hand, the evidence established that Willie White is Sophia White's husband and was so at the time when the apartment was rented.[11] The evidence further established that Willie and Sophia White were living together when the apartment was rented and that he moved into it with her and her two children.[12]

Under Minnesota law, standing (or capacity to bring an action) involves a two-fold inquiry: (1) has an actual injury been alleged; and (2) does the person alleging the injury have an interest that is arguably among those to be protected by the law in question.[13] Here, eviction is clearly an actual (as opposed to theoretical) injury. And the evidence suggests that Mr. White's failure to sign the lease was a simple oversight. But even if that was not the case, it is settled Minnesota law that possession of a leasehold by a family member of the lessee will be construed to be the possession of the lessee.[14] Willie White was Sophia White's husband and was therefore rightfully in possession of the leasehold. In effect, he may stand in her place, and he had an interest that was protected by Section 183.06 of the City Code. He therefore has standing to maintain this enforcement proceeding and Court Apartments' motion to dispose of this matter summarily for lack of standing should be denied.

III. The City Did Establish a *Prima Facie* Case.

At the close of the City's evidence, Court Apartments made a motion to dismiss this proceeding on the ground that the City had failed to establish a *prima facie* case. That motion was analogous to a defendant's motion for a directed verdict at the close of the plaintiff's evidence in district court practice.[15] But since there is no exact administrative analog to that kind of motion, the Law Officer will also treat this particular motion as a motion for summary disposition. When requesting that a proceeding be dismissed summarily, the moving party, in this case Court Apartments, has the initial responsibility of showing that no material fact is in dispute. In order to successfully resist Court Apartments' motion for summary disposition, the City must show that some specific facts are in dispute that bear on the outcome of the case.[16] If genuine disputes of material fact do exist, this matter must then be submitted to the Panel of Commissioners to make findings of fact that resolve them. Finally, when considering a motion for summary disposition, the evidence must be viewed in the light most favorable to the non-moving party.[17] In other words, here all doubts about the evidence and factual inferences that can be made from the evidence in the record must be resolved in the City's favor and against Court Apartments.[18] Put yet another way, if reasonable

people could differ about the evidence's meaning under the law, summary disposition should not be granted.[19]

The provisions of the City Code prohibiting discrimination in real estate transactions[20] are largely restatements of almost identical provisions of the Minnesota Human Rights Act (MHRA).[21] So, it stands to reason that the City Council intended that ordinance to be applied in the same way in which the analogous provisions of the MHRA have been applied. In considering whether a discriminatory action has occurred under the Minnesota Human Rights Act, Minnesota courts apply the principles articulated by the U. S. Supreme Court in *McDonnell-Douglas Corp. v. Green*.[22] The approach to adjudicating discrimination claims in the *McDonnell-Douglas* case consisted of a three-step analysis. The complainant is first required to establish a *prima facie* case. Establishing the required *prima facie* case then creates a presumption of discrimination prohibited by Minn. Stat. § 363.03. Although the burden of proof always remains with the complainant, the burden of producing evidence then shifts to the respondent to present evidence of some legitimate, non-discriminatory reason for its actions. If the respondent, in turn, comes forward with evidence of legitimate, nondiscriminatory reasons for the employment actions in question, then the burden of producing evidence shifts back to the complainant. And the complainant must then prove by a preponderance of the evidence that the reasons or justification advanced by the respondent amount to a pretext for intentional discrimination.[23]

What actually constitutes the required *prima facie* showing may vary from case to case, depending on the kind of discrimination being alleged and the particular factual pattern and context.[24] Here, a *prima facie* case consists of showings (1) that Mr. White was a member of a class protected by Chapter 183 of the City Code — i.e., a "family"; (2) that Court Apartments withheld or took an adverse action against a leasehold interest that Mr. White was enjoying — i.e., evicted him; and (3) that Mr. White's eviction was "discriminatory" — i.e., amounted to unequal treatment of Mr. White by reason of his familial status.[25] Another way of framing the third element of a *prima facie* case in this context is that the City must establish that Mr. White was subjected to adverse treatment that similarly situated non-protected group members were not subjected to. The City clearly established the first two elements of a *prima facie* case. The outcome of Court Apartments' motion for summary disposition therefore turns on whether the City established the third element.

The City presented evidence that, among other things, Court Apartments (1) restricted the Whites from barbecuing; (2) criticized what it claimed to be disruptive behavior by their children; and (3) admitted that it preferred not to have families with children on the third floor. Addressing the third factor first, in *State by Khalifa v. Parkshore Estates, Inc*., the Minnesota Court of Appeals recognized that "separation of families from non-families is desirable and necessary in certain circumstances,"[26] and therefore held that the MHRA does not prohibit a landlord from taking the age of children into account in determining where to place tenants within a building.[27] Although not completely on point, the *Khalifa* case strongly indicated that placing families with children in particular areas within an apartment building should be viewed as a measure designed *to avoid* excluding families from the building rather than as

evidence of illegal discrimination. The City has correctly pointed out that this case is not about "steering" of tenants from one floor to another, and that *Khalifa* cannot therefore be a basis for dismissing the entire case.[28] But what *Khalifa* does stand for is that the City cannot rely on evidence that Court Apartments preferred not to have families with children on the third floor of the building as evidence of unequal treatment of the Whites by reason of their familial status.

On the other hand, the City has produced evidence that Court Apartments restricted the Whites from barbecuing, a restriction that does not appear to have been placed on other tenants. It also produced evidence that a reason why Court Apartments evicted them was complaints about the disruptive behavior of their children. That evidence is sufficient to establish a *prima facie* case, since in considering Court Apartments' motion, the Law Officer and the Panel are obliged to view the evidence in the light most favorable to the City and to resolve all possible inferences and questions of credibility in the City's favor.[29] But that does not mean that the City has proven its case. It simply means that the Law Officer and the Panel must turn to the second step of the *McDonnell-Douglas* analysis and decide whether Court Apartments presented evidence of legitimate, non-discriminatory reasons for restricting the Whites from barbecuing and for evicting them.[30]

For these reasons, the Law Officer recommends that the Panel deny Court Apartments' motion for summary disposition based on the City's failure to establish a *prima facie* case and that the Panel proceed to apply the law, as set forth in the accompanying legal instructions, to the evidence in this case for the purpose of making findings of fact.

J. L. L.

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[1] Transcript (Tr.) at pp. 403-04.

[2] Tr. at p. 412.

[3] Tr. at p. 446.

[4] One would have expected such a request to have come soon after the Law Officer sustained the City's objection to Exhibit 12, but counsel proceeded immediately thereafter to give their final arguments, and the issue was never again raised before the hearing concluded. (*Id*. at pp. 446-64.)

[5] *Cochrane v. Tudor Oaks Condominium Project*, 529 N.W.2d 429, 432-33 (Minn. App. 1995). In federal practice, standing may also refer to a court's authority to hear a case — i.e., subject matter jurisdiction.

[6] This was the approach taken by the court in *Cochrane*, *supra*; *see also Sundberg v. Abbott*, 423 N.W.2d 686 (Minn. App. 1988).

[7] *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); Minn. Rule pt. 1400.5500K; Minn. R. Civ. P. 56.03.

[8] Minn. R. Civ. P. 56; *compare* Minn. Rules, pt. 1400.6600.

[9] *Illinois Farmers Insurance Co. v. Tapemark Co*., 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984).

[10] Exhibit 3.

[11] Tr. at pp. 17-18 and 100-01.

[12] *Id*.

[13] *Twin Ports Convalescent, Inc. v. State Bd. of Health*, 257 N.W.2d 343, 346 (Minn. 1977).

[14] *Bagley v. Sternberg*, 26 N.W. 602 (Minn. 1886); *see also Mercantile State Bank v. Vogt*, 226 N.W. 847 (Minn. 1929).

[15] Minn. R. Civ. P. 50.01.

[16] *Thiele v. Stitch*, 425 N.W.2d 580, 583 (Minn. 1988); *Hunt v. IBM Mid America Employees Federal*, 384 N.W.2d 853, 855 (Minn. 1986).

[17] *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. Ct. App. 1984).

[18] *See*, e.g., *Celotex*, 477 U.S. at 325; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971); *Thompson v. Ca*mpbell, 845 F. Supp. 665, 672 (D. Minn. 1994).

[19] *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 250-51 (1986).

[20] Section 183.06.

[21] Minn. Stat. § 363.03, subd. 2. (Unless otherwise specified, all references to Minnesota Statutes are to the 1998 edition.)

[22] 411 U.S. 792, 802-03 (1973). *See Hubbard v. United Press International, Inc*., 330 N.W.2d 428 (Minn. 1983) and *Danz v. Jones*, 263 N.W.2d 395, 399 (Minn. 1978).

[23] *Id*.

[24] *Sigurdson v. Isanti County*, 386 N.W.2d 715, 720 (Minn. 1986).

[25] *See* Section 183.02(5) of the City Code.

[26] 413 N.W.2d 269, 272 (Minn. App. 1987).

[27] *Id*.

[28] Memorandum in Opposition to Respondent's Motion to Dismiss (City's Memorandum) at pp. 3 and 4.

[29] *Ostendorf v. Kenyon*, *supra*.

[30] The law officer notes that what Court Apartments offered in its Memorandum of Law to support its claim that the City failed to establish a *prima facie* case was evidence that there were legitimate, non-discriminatory reasons for what it did. That evidence is germane to the second step of the *McDonnell-Douglas* analysis but not to whether the City was able to establish a *prima facie* case.